

### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the rule not adding any new navigational restrictions, rather the rule will remove existing navigational restrictions to Sparkman Channel.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit Sparkman Channel may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman

and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National

Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves removing existing regulations established in 33 CFR 165.752. It is categorically excluded from further review under paragraph L60(b) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for Record supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034; 33 CFR 1.01–1, 6.04–1, and 160.5; Department of Homeland Security Delegation No. 01070.1

### § 165.752 [Removed]

■ 2. Remove § 165.752

Dated: January 21, 2021.

**Eric C. Jones,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 2021–02103 Filed 2–1–21; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 36 and 42

**RIN 2900–AR08**

### Federal Civil Penalties Inflation Adjustment Act Amendments

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is providing public notice of inflationary adjustments to the maximum civil monetary penalties assessed or enforced by VA, as implemented by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, for calendar year 2021. VA may impose civil monetary penalties for false loan guaranty certifications. Also, VA may impose civil monetary penalties for fraudulent claims or written statements made in connection with VA programs generally. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, sets forth a formula that increases the maximum statutory amounts for civil monetary penalties and directs VA to give public notice of the new maximum amounts by regulation.

**DATES:** This rule is effective February 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Li, Chief, Regulations Team, Loan Guaranty Service, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632-8862. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act) (Pub. L. 114-74, sec. 701, 129 Stat. 599), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, 104 Stat. 890), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act was codified in a note following 28 U.S.C. 2461. The 2015 Act requires agencies to publish annual adjustments for inflation, based on the percent change between the Consumer Price Index (defined in the Act as the Consumer Price Index for all-urban consumers (CPI-U) published by the Department of Labor) for the month of October preceding the date of the adjustment and the prior year's October CPI-U. 28 U.S.C. 2461 note, secs. 4(a) and (b) and 5(b)(1). This rule implements the 2021 calendar year inflation adjustment amounts.

Under 38 U.S.C. 3710(g)(4)(B), VA is authorized to levy civil monetary penalties against private lenders that originate VA-guaranteed loans if a lender falsely certifies that they have complied with certain credit information and loan processing standards, as set forth by chapter 37,

title 38 U.S.C. and part 36, title 38 CFR. Under section 3710(g)(4)(B), any lender who knowingly and willfully makes such a false certification shall be liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed \$10,000, whichever is greater. VA implemented the penalty amount in 38 CFR 36.4340(k)(1)(i) and (k)(3). On December 23, 2020, OMB issued Circular M-21-10. This circular reflects that the October 2019 CPI-U was 257.346 and the October 2020 CPI-U was 260.388, resulting in an inflation adjustment multiplier of 1.01182. Accordingly, the calendar year 2021 inflation revision imposes an adjustment from \$23,331 to \$23,607.

Under 31 U.S.C. 3802, VA can impose monetary penalties against any person who makes, presents, or submits a claim or written statement to VA that the person knows or has reason to know is false, fictitious, or fraudulent, or who engages in other covered conduct. The statute permits, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,000 for each claim. 31 U.S.C. 3802(a)(1) and (2). VA implemented the penalty amount in 38 CFR 42.3(a)(1) and (b)(1). As previously noted, Circular M-21-10 reflects an inflation adjustment multiplier of 1.01182. Therefore, the calendar year 2021 inflation revision imposes an adjustment from \$11,665 to \$11,803.

Accordingly, VA is revising 38 CFR 36.4340(k)(1)(i) and (3) and 38 CFR 42.3(a)(1) and (b)(1) to reflect the 2021 inflationary adjustments for civil monetary penalties assessed or enforced by VA.

#### *Administrative Procedure Act*

The Secretary of Veterans Affairs finds that there is good cause under 5 U.S.C. 553(b)(B) and (d)(3) to dispense with the opportunity for prior notice and public comment and to publish this rule with an immediate effective date. The 2015 Act requires agencies to make annual adjustments for inflation to the allowed amounts of civil monetary penalties "notwithstanding section 553 of title 5, United States Code." 28 U.S.C. 2461 note, sec. 4(a) and (b). The penalty adjustments, and the methodology used to determine the adjustments, are set by the terms of the 2015 Act. VA has no discretion to make changes in those areas. Therefore, an opportunity for prior notice and public comment and a delayed effective date is unnecessary.

#### *Executive Orders 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at <http://www.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

#### *Unfunded Mandates*

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and Tribal governments, or on the private sector.

#### *Paperwork Reduction Act*

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). This final rule is exempt from the notice and comment requirements of the APA because the 2015 Act directed the Department to issue the annual adjustments without regard to section 553 of the APA. Therefore, the requirements of the RFA applicable to notice and comment rulemaking do not apply to this rule.

Accordingly, the Department is not required either to certify that the final rule would not have a significant economic impact on a substantial number of small entities or to conduct a regulatory flexibility analysis.

#### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.114, Veterans Housing Guaranteed and Insured Loans.

#### *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

#### **List of Subjects**

##### *38 CFR Part 36*

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

##### *38 CFR Part 42*

Administrative practice and procedure, Claims, Fraud, Penalties.

#### *Signing Authority*

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Brooks D. Tucker, Assistant Secretary for Congressional and Legislative Affairs, Performing the Delegable Duties of the Chief of Staff, Department of Veterans Affairs, approved this document on January 14, 2021, for publication.

#### **Luvenia Potts,**

*Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.*

**Editorial note:** This document was received for publication by the Office of the Federal Register on January 15, 2021.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR parts 36 and 42 as set forth below:

#### **PART 36—LOAN GUARANTY**

■ 1. The authority citation for part 36 continues to read as follows:

**Authority:** 38 U.S.C. 501 and 3720.

#### **§ 36.4340 [Amended]**

■ 2. In § 36.4340, amend paragraphs (k)(1)(i) introductory text and (k)(3) by removing “\$23,331” and adding in its place “\$23,607”.

#### **PART 42—STANDARDS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT**

■ 3. The authority citation for part 42 continues to read as follows:

**Authority:** Pub. L. 99–509, secs. 6101–6104, 100 Stat. 1874, codified at 31 U.S.C. 3801–3812.

#### **§ 42.3 [Amended]**

■ 4. In § 42.3, amend paragraphs (a)(1)(iv) and (b)(1)(ii) by removing “\$11,665” and adding in its place “\$11,803”.

[FR Doc. 2021–01335 Filed 2–1–21; 8:45 am]

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#### **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

#### **Centers for Medicare & Medicaid Services**

#### **42 CFR Part 423**

[CMS–4189–F2]

**RIN 0938–AT94**

#### **Medicare Program; Secure Electronic Prior Authorization for Medicare Part D Program; Delay in Effective Date**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

**ACTION:** Final rule; delay in effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2021 from the Assistant to the President and the Chief of Staff, entitled “Regulatory Review,” this action temporarily delays for 60 days the effective date of the December 31, 2020 final rule entitled, “Medicare Program; Secure Electronic Prior Authorization For Medicare Part D”, which published on December 31, 2020.

**DATES:** The effective date of the final rule amending 42 CFR part 423 published at 85 FR 86824 on December 31, 2020, is delayed from February 1, 2021, to March 30, 2021.

**FOR FURTHER INFORMATION CONTACT:** Joella Roland, (410) 786–7638.

**SUPPLEMENTARY INFORMATION:**

#### **Background and Provisions of the Final Rule**

The January 20, 2021 memorandum from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review,” instructed Federal agencies to delay the effective date of rules published in the **Federal Register**, but which have not yet taken effect, for a period of 60 days from the date of the memorandum.

The purpose of the final rule is to adopt a new standard for certain transactions concerning Part D-covered drugs prescribed to Part D-eligible individuals under the Part D e-prescribing program. Under this final rule, Part D plan sponsors will be required to support version 2017071 of the National Council for Prescription Drug Programs (NCPDP) SCRIPT standard for four electronic Prior Authorization (ePA) transactions, and prescribers will be required to use that standard when performing ePA transactions for Part D-covered drugs they wish to prescribe to Part D-eligible individuals. Part D plans, as defined in 42 CFR 423.4, include Prescription Drug Plans (PDPs) and Medicare Advantage Prescription Drug Plans (MA-PDs); Part D sponsor, as defined in 42 CFR 423.4, means the entity sponsoring a Part D plan, MA organization offering a MA-PD plan, a Programs of All-Inclusive Care for the Elderly (PACE) organization sponsoring a PACE plan offering qualified prescription drug coverage, and a cost plan offering qualified prescription drug coverage. The ePA transaction standard will provide for the electronic transmission of information between the prescribing health care professional and Part D plan sponsor to inform the sponsor’s determination as to whether or not a prior authorization (PA) should be granted. The NCPDP SCRIPT standard version 2017071 was adopted as a Part D e-prescribing program standard for certain defined transactions in the April 16, 2018 final rule (83 FR 16440) titled Medicare Program; Contract Year 2019 Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit Programs, and the PACE Program that became effective June 15, 2018.

The effective date of that rule, which would have been February 1, 2021, is now effective on March 30, 2021.

The temporary delay in the effective date of this final rule is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the memorandum of